

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

In the Matter of:

Warranty Corporation,

No. 04-144-CZ

Hon. Paula J.M. Manderfield

Respondent.

CP No. 200123446

ASSURANCE OF DISCONTINUANCE

1. INTRODUCTION

1.1 This Assurance of Discontinuance is an agreement between Michael A. Cox, Attorney General of the State of Michigan, on behalf of the People of the State of Michigan (sometimes also referred to herein as the "Attorney General" or the "Department") and Respondent Warranty Corporation ("Respondent").

1.2 The purpose of this Assurance of Discontinuance ("Assurance") is to resolve alleged violations of the Michigan Consumer Protection Act ("MCPA"), MCL 445.901 et seq, the Attorney General's demand for civil penalties, and the reimbursement of costs and expenses incurred by the Department in investigating this matter and enforcing the MCPA. Further, Respondent agrees and acknowledges that Respondent assumes the obligation to act and conduct itself reasonably, without negligence, and to use good faith and best efforts to comply with each obligation arising under this Assurance and with other applicable law.

1.3 The terms of this Assurance are binding on the Department and upon Respondent Respondent's related and affiliated entities, its franchisees, employees, agents and representatives relating to any activity concerning Respondent's business and business interests

in Michigan or involving Michigan consumers Respondent's officers and directors, and its respective successors and assigns. Respondent is responsible for compliance with the terms of this Assurance and shall ensure that all persons bound under this Assurance, as well as persons engaged under contracts and all other agreements, are notified of and are in compliance with the terms and conditions of this Assurance. Further, Respondent shall not enter into any contract or agreement that is inconsistent with the terms of this Assurance.

1.4 Respondent agrees not to contest: (a) the authority or jurisdiction of the Department of the Attorney General over the subject matter of this Assurance, including its authority to execute this Assurance; or, (b) any terms or conditions set forth herein. Respondent waives all objections and defenses that it may have as to jurisdiction or venue.

1.5 Respondent agrees that in negotiating the terms of this Assurance and related aspects it obtained the advice and/or representation of counsel.

1.6 Respondent warrants that the person(s) signing on behalf of Respondent is authorized to execute this Assurance and to bind Respondent in this matter, and signs this Assurance knowingly and voluntarily.

1.7 The parties to this Assurance agree that the terms and conditions of the Assurance are fair, reasonable, and consistent with the public interest and the doctrines of applicable law. This Assurance, upon due and proper execution by the parties, shall be filed and entered with the Ingham County Circuit Court ("Court Entry").

1.8 The Court Entry of this Assurance by Respondent is neither an admission of liability with respect to any issue addressed in this Assurance nor is it an admission or denial of any factual allegations or legal conclusions stated or implied herein.

II. JURISDICTION AND PARTIES BOUND

2.1 The Ingham County Circuit Court has jurisdiction over the subject matter of this action pursuant to MCL 445. 905(1). The Court also shall retain personal jurisdiction over Respondent to enforce the terms of this Assurance. Respondent waives all objections and defenses regarding jurisdiction and venue.

2.2 Respondent, its successors, and assigns shall notify the Department within fifteen (15) days of the occurrence of any significant change in its corporate structure, such as dissolution, assignment, or sale, the formation of any successor corporation, the creation or dissolution of subsidiaries, involvement in bankruptcy receivership or similar proceedings, or any other change which may affect any compliance obligations arising out of this Assurance.

III. DEFINITIONS

3.1 In this Assurance, the words and terms set forth below shall have the following meanings:

a. "Advertisement," or "advertising," means any oral, written, graphic, electronic or other statement, representation or false representation directed to consumers regardless of the medium of communication.

b. "Auto S/W Contract" means any Respondent's contracts or written agreements for an automobile service contract and/or automobile warranty contract. It includes, but is not limited to, any amendment, modification, addendum or rider to a contract, that is or was employed, used, advertised, represented, or offered by Respondent in the State of Michigan at any time on or after January 1, 1995, and which does not comply with the terms of this Assurance.

c. "Calendar day" or "day" means Sunday through Saturday of any given week.

d. "Clear and conspicuous" or other forms of the words such as "clear" or "clearly and conspicuously" means a statement or representation is readily understandable, free from ambiguity, contradiction, and confusion, and presented in such size, color contrast, location audibility and visibility duration, compared to other matter with which it is presented or to which it is related so that it will be noticed and understood and will not be ambiguous or contradictory. If such statement or representation modifies, explains, or clarifies other information with which it is presented or to which it is related, the statement, in order to be "clear and conspicuous," must also be present in close proximity to the information it modifies and the statement may not be obscured.

e. "Complaint Receiver" means any federal or State Attorney General, any federal or State office that receives consumer complaints, any federal or State governmental unit which regulates insurers, any Better Business Bureau, any federal, State or local consumer affairs office or similar organization that has received or may receive any Michigan consumer's complaint made against Respondent concerning Respondent's advertising, offering, selling, or compliance with, automobile service contracts and/or automobile warranty contracts.

f. "Consumer" or "consumer" means any Michigan person, natural person, individual, governmental agency or entity, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized (unless the context indicates otherwise). It includes any former,

present, or future Michigan customer of Respondent. Further, sometimes consumers are referred to herein as "complainants"

g. "Covered Claim" means a request for coverage made or attempted to be made by a consumer while acting in good faith, to Respondent that falls within the scope of the Auto S/W Contract of such consumer or within the scope of any representation, advertisement, or solicitation, made to such consumer by Respondent.

h. "Exclusion" means any of the following:

1. Any Auto S/W Contract term (or group of terms), provision (or group of provisions), clause (or group of clauses) not clearly and conspicuously disclosed by Respondent in any representation, advertisement, or solicitation used by Respondent to solicit and obtain the consumer's purchase of any Auto S/W Contract that was used to deny a Covered Claim;

2. Any conduct of Respondent employed or used to disavow or ignore a consumer's claim;

3. Any conduct of Respondent used to discourage the consumer from making a Covered Claim.

i. "False representation," "falsely represent," or "falsely representing" shall have its common and ordinarily understood meaning and shall also mean:

1. Any representation that under the MCPA or under any other applicable federal or State law, regulation or judicial proceeding, has a tendency to mislead or confuse.

2. Any omission or concealment or partial disclosure of any fact such that the omission or concealment would have a tendency to mislead; or

3. Any other failure to clearly and conspicuously disclose any definition, pre-existing condition, exception, limitation, qualification or any other restriction to a consumer before the consumer purchased any Auto S/W Contract or New Contract from a Respondent.

j. "Final Judgment" means a judgment entered by any State or Federal Court having proper jurisdiction over the person or property and of which there exists no further rights of any party to any appeal.

k. "Good Faith" means honesty in fact in any conduct or transaction in which Respondent engages and/or is required to do or refrain from doing under the terms of this Assurance. "Good faith" requires that Respondent must govern its conduct so as to act with an honest belief, the absence of malice, and the absence of design to defraud or to seek an unconscionable advantage. Further, acting in "good faith" includes using best efforts to perform all obligations owed to any consumer, free from any conduct (whether by action or inaction) which is in violation of the MCPA, or any federal or Michigan law or regulation, or which is arbitrary, reckless, negligent, indifferent, or an intentional disregard of the interests of those consumers who were, are, or may become a customer. "Good Faith" also means honesty in fact in any conduct or transaction in which the consumer, who is or may become a complainant under this Assurance, engaged or engages.

l. "New Contract" means the revised contract Respondent is required to draft and employ pursuant to Paragraph 5.3 and all other applicable provisions of this Assurance.

m. "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association, or other legal entity.

n. "Redress Entity" means any of the following:

Better Business Bureau, Western Michigan
40 Pearl, NW, Suite 354
Grand Rapids, MI 49503

Better Business Bureau, Detroit and Eastern Michigan
30555 Southfield Road, Suite 200
Southfield, MI 48076-7751

Better Business Bureau, Northwest Ohio and Southeast Michigan
3103 Executive Parkway, Suite 200
Toledo, Ohio 43606-1310

o. "Representation," "representing," or "represent" means any statement made in any advertisement, any oral or written statement or implied statement, any depiction, any graphics, or other mode or type of communication, made by any means, including but not limited to representations made by mailings, by newspapers or magazines, by television or radio broadcasts, by e-mail, Internet, or Internet web page or by any other electronic or telephonic means, and any statements or propositions that a consumer might reasonably believe are implied by express statements or omissions; and includes false representations.

p. "Service contract" shall have the same meaning as the term "service contract" now has under the Magnuson-Moss Warranty Act, 15 USC 2301 (8), which states:

The term "service contract" means a contract in writing to perform, over a fixed period of time or for a specified duration services relating to the maintenance or repair (or both) of a consumer product.

q. "Technician," "technicians" "service repair shop," "service repair facility" and similar words or phrases shall mean the service repair shop or the service technician who diagnoses, removes any parts, systems, or components for diagnoses, repairs, replaces, and/or supplies other services, labor or products to the consumer's auto for which the consumer makes or attempts to make a claim for coverage under the Auto S/W Contract.

r. "Warranty" or "written warranty" shall have the same meaning as the term "written warranty" now has under the Magnuson-Moss Warranty Act, 15 USC section 2301 (6) which states:

(A) any written affirmation of fact or written promise made in connection with the sale of a consumer product by a supplier to a buyer which relates to the nature of the material or workmanship and affirms or promises that such material or workmanship is defect free or will meet a specified level of performance over a specified period of time, or

(B) any undertaking in writing in connection with the sale by a supplier of a consumer product to refund, repair, replace or take other remedial action with respect to such product in the event that such product fails to meet the specification set forth in the undertaking, which written affirmation, promise, or undertaking becomes part of the basis of the bargain between a supplier and a buyer for purposes other than resale of such product.

s. "NIA" means the Notice of Intended Action And Notice of Opportunity To Cease And Desist issued against Respondents by the Michigan Attorney General on January 28, 2002 captioned as: In The Matter of the Warranty Group et al, AG File No. 200123446.

IV. OBLIGATIONS IMPOSED UNDER OTHER LAWS NOT AFFECTED

4.1 The terms of this Assurance are not intended, and shall not be construed, to diminish consumers' rights, or Respondent's obligations, under any existing state or federal law

(including, specifically, the MCPA and the Magnuson-Moss Warranty Act, (MMWA) 15 USC 2301 et seq). In the event any other law or court decision imposes, or may in the future impose, any obligations beyond those contained in this Assurance, such obligations shall apply to Respondent notwithstanding any provision of this Assurance.

V. IMPLEMENTATION OF COMPLIANCE MEASURES

5.1 Proscriptive Injunctions: Respondent, shall immediately comply with all applicable provisions of the MCPA and shall immediately cease all of the following methods, acts or practices in connection with the advertising or sale of Contracts, whether they relate to any Auto S/W Contract or, any New Contract (referred to in this Section (Section 5) as "Contract" or "Contracts" or "New Contract"):

a. Advertising, soliciting, offering, marketing, selling or engaging in any transaction relating to a Contract that fails to comply with all applicable provisions of this Assurance, with the MCPA or with any other applicable federal or Michigan law or regulation;

b. Falsely representing that Respondent sells contracts that are warranty contracts except that Respondent may continue use of the term "warranty" in its name, trade name, trademarks and business entity names only, and only if in the representations, advertisements, solicitations, New Contracts and other representations for sales or purchases of service contracts, the use of the word "warranty," includes a clear and conspicuous written (oral or electronic, as applicable) notice that includes information that the product or service advertised, offered, sold or issued by Respondent is a service contract, is not a warranty and defining the term "service contract" as defined in Paragraph 3.1p of this Assurance.

- c. Falsely representing that Respondent's Contracts provide benefits that are not provided;
- d. Falsely representing that a guarantee is given;
- e. Falsely representing that a consumer who purchases one of Respondent's Contracts will receive certain benefits, or certain benefits that are advertised as "free," or "absolutely free" (or stated in words conveying a similar message);
- f. Falsely representing that Respondent's Contract provides unlimited mileage coverage;
- g. Failing to clearly and conspicuously disclose the meaning of any word, definition, term or other provision in any advertisement, offer, solicitation, Contract or other representation when such word, definition, term or provision is a material fact or material to the transaction;
- h. Representing that Respondent's Contracts are approved by one or more manufacturers or any person unless Respondent also provides a telephone number at which a consumer may contact such manufacturer or person before purchasing a Contract, and may without delay, obtain a complete and accurate description of the approval and the name and address of the manufacturer or person making such approval.
- i. Falsely representing that Respondent is able to offer Contracts at a "low price," or "lower price," or the "lowest price" (or any words or phrases of similar import), because Respondent's business is endowed with big volume sales, or because there are no dealers' commissions, or because there are no salesmen's commissions.
- j. Representing that Respondent has received any award, recognition, approval or other acknowledgement (each hereafter referred to as "Award") that does not

clearly state the name and address of the maker of the Award, its affiliation with Respondent, the date the Award was given and the name, address and telephone number of the place where a copy of the statement of the Award may be obtained by a consumer free of any charge.

k. Unless otherwise specifically approved in writing by the Attorney General, marketing and selling any Contract or New Contract within Michigan until all consumer complaints identified by the provisions of Section 6 are resolved in accordance with this Assurance.

l. Requiring any consumer to submit the consumer's complaint or other dispute to arbitration, unless the following written notice is clearly and conspicuously included in each New Contract, and made available to the consumer prior to purchase:

Any controversy or claim arising out of or relating to the service contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Supplementary Procedures for Consumer Related Disputes (these procedures are part of the general Commercial Dispute Resolution Procedures). Arbitration provisions and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

BE AWARE: (1) The arbitration process or the result of it, may obligate you to pay costs or other expenses that could exceed the amount you pay for the service contract. (2) Arbitration and the arbitration process may cause you to waive important consumer rights and remedies provided to you under certain federal and Michigan laws and regulations and your waiver may include but is not limited to loss of a jury or judge trial;

m. Enforcing or attempting to enforce, directly or indirectly, any jurisdictional or venue provision of any Contract, except a provision for binding arbitration in New Contracts only, that prevents a consumer from instituting and/or

maintaining a lawsuit against Respondent in any Michigan court otherwise having appropriate jurisdiction and venue. Any such contract provision is null and void, provided that this paragraph shall not affect the finality of any Final Judgment entered on or before January 28, 2002.

n. Enforcing or attempting to enforce or including within any Contract any term or provision affording Respondent unilateral rights to modify the terms of the Contract. Any such term or provision is null and void.

5.2 Affirmative Obligations: Within 30 days of the Court Entry of this Assurance, in any advertising, offering, Contract, New Contract or other representation, Respondent shall immediately comply with all applicable provisions of the MCPA and all applicable federal and Michigan laws and regulations as well as the obligations set forth in this Assurance and comply with the following obligations:

a. The MCPA and the Federal Trade Commission regulations with regard to the use of the word "free" or similar terms.

b. Clearly and conspicuously disclose all material terms and conditions provided under any Contract. Such disclosure may be made by making the contract available for review prior to purchase and shall include but not be limited to, disclosure of:

(1) The notice of claims procedure;

(2) The necessity of inspection before approval, if any, and the maximum time allowed for such inspection;

(3) The maintenance obligations of the consumer;

(4) The maintenance records the consumer will be required to furnish in support of any claim or notice of claim;

(5) Any and all exclusions, preexisting conditions, exceptions and other limitations; and

(6) Any definition that has the effect of limiting coverage or other benefits to the consumer.

c. Clearly and conspicuously disclose in terms easily understandable to the average consumer, any Contract term or provision which is or has the effect of being, an exclusion, limitation, exception, pre-existing condition, an entitlement to only part of a benefit, or of being any other restriction in any Contract.

d. Clearly and conspicuously disclose any age limitation or age restriction pertaining to any Contract or Contract benefit.

e. Clearly and conspicuously disclose all obligations that will be imposed upon the consumer under the Contract.

f. Clearly and conspicuously notify consumers that they may cancel within 10 days after receiving the Contract, and such notice shall substantially conform to the notice of cancellation requirements of the Home Solicitation Sales Act, MCL 445.111 *et seq.*, or the Gift Promotion Act, MCL 445.931.

g. Respondent shall retain at Respondent's expense for not less than three years, any and all present records and documents and its future records and documents which shall include but not be limited to, the records and documents respecting advertising, soliciting, marketing, selling, the Contracts, receipt of claims, claims processing, and determinations, and dates of determinations, any writings to consumers

with Contracts, any and all payment records, and any and all customer lists. Upon 48 hours notice, Respondent shall permit the Attorney General or his representative inspection and copying rights of any such records during normal business hours.

h. Any inspection Respondent has the right to require under a Contract shall be completed within 48 hours after notification by the consumer or the Technician of the claim. The consumer's or Technician's notification shall indicate where the vehicle and the failed components are available for inspection. If the inspection is not completed within 48 hours, Respondent's right to inspect shall be deemed waived.

i. All material terms, provisions and conditions of the contract must be clearly and conspicuously disclosed in any advertisement, offer, solicitation, application or other representation concerning such Contract before Respondent accepts any monies from any consumer for the Contract.

j. Disclose that any arbitrator's or arbitration fee(s) charged to a consumer to conduct such arbitration shall be reimbursed to the consumer by Respondent if the consumer is the prevailing party.

5.3 New Contracts: Within 30 days of the date of the Court Entry of this Assurance, Respondent shall revise any and all Auto S/W Contracts. (Such revised contracts shall be known as the "New Contract.")

a. In the New Contract, Respondent shall define and shall clearly and conspicuously disclose:

1. The meaning of any aggregate dollar amount it will pay under the New Contract;

2. The meaning of each and every material term or phrase used in the New Contract. Every defined term shall be placed in bold face type of not less than 10-point type size;

3. The date when the New Contract is effective;

4. Any and all obligations imposed on the consumer in a single section of the New Contract.

b. The New Contract shall have as a beginning paragraph, the following statement in 12-point bold type:

The parties are obligated to perform this contract according to its terms. Your obligations are stated in the contract under the provision entitled: "[Respondent must insert here the contract clause or the numbered provision where the consumer's obligations are set forth]." Our obligations are set forth in the rest of the contract provisions. If you do not wish to continue this contract with us, you have the right to cancel it. Please see paragraph numbered [Respondent must insert here the contract clause or the numbered provision where the consumer may find the contract cancellation terms] of this contract for your rights regarding cancellation.

c. In the New Contract, the claim or notice of claim procedure and the corresponding rights and responsibilities of each party must be clearly and conspicuously disclosed. Such procedure shall include the following:

1. Claim Instructions:

A) Indicate Respondent's normal business hours and how to make claims during normal business hours and hours that are not normal business hours.

B) Indicate that a claim must include a concise statement of the time and expected cause of the vehicle failure.

2. Respondent's Claim Reply:

A) Shall indicate whether Respondent wishes to exercise any right to demand documentation or proof that is reasonably available to the consumer at a cost of not more than \$2.00;

B) Shall indicate whether Respondent wishes to exercise its right to inspect;

C) Shall indicate whether it has been determined if the claim is accepted or denied.

3. Time Frames for Respondent's Responses:

A) If the consumer or the Technician provides the claim notice by facsimile or e-mail (and includes a facsimile number or an e-mail address for any response), Respondent must reply within 90 minutes, unless the notice is faxed or e-mailed within the last 90 minutes of normal business hours. In such event, Respondent must respond on or before 9:30 a.m. on the next day.

B) If the consumer or the Technician provide the notice by mail or verbally, Respondent must reply within 12 hours of receipt.

C) In all cases, Respondent must postmark and mail a written notice to the consumer within three (3) days of receipt of the first notice of any claim. The written notice must clearly and conspicuously disclose the specific reasons for any dispute or denial of the claim. In the absence of a notice disclosing the specific reason for a denial or dispute of the claim, the claim shall be deemed approved.

4. Covered Repair Payment:

Indicate that Respondent will postmark and mail to the consumer payment within three (3) days after completion of the repair, or during normal business hours will make available to the consumer's Technician, immediately after completion of the repair, credit card payment.

d. The New Contract shall state the date and the time when the New Contract shall be in force and binding upon the Respondent and the consumer.

e. The New Contract shall acknowledge that Respondent agrees that the New Contract was made in Michigan; that in any dispute Michigan laws and regulations apply unless there is preemption by a federal law; and that any consumer dispute arising from or by the terms of the New Contract may be adjudicated against Respondent in any appropriate Michigan federal or state court or by binding arbitration if so required by the terms of the New Contract.

f. The New Contract shall not contain any provision requiring a consumer to continue to keep a Contract in force in order to receive the benefits of any guarantee for replaced parts, for labor or for other services.

g. The New Contract shall not contain any provision that would violate any of the terms or conditions of this Assurance.

h. The New Contract shall comply with all other applicable provisions of this Section (Section 5) and with any other applicable Sections of this Assurance.

i. The New Contract shall contain a provision that discloses a consumer's 10-day right to cancel,

j. The New Contract shall not contain any provision that permits Respondent the right to unilaterally modify the New Contract.

5.4 Other Affirmative Obligations: Upon the Court Entry of this Assurance, Respondent shall promptly perform for and/or provide to consumers all of the following:

a. Adequate staff persons who are trained to meet consumers' service needs, to promptly receive consumers' claims information, to promptly and competently investigate/inspect such claims, to promptly process the claims, to make reliable and good faith determinations regarding whether a claim is a Covered Claim under the consumers' Auto S/W Contract or New Contract, and to satisfy and promptly pay consumers' Covered Claims.

b. A toll-free telephone number for consumers and their technicians during all hours of Respondent's normal business hours and during any additional hours Respondent represents claims are accepted and processed, as well as provide sufficient staffing for prompt and courteous telephone service to consumers and to consumers' technicians; and make New Contract forms available to consumers upon a consumer's request.

c. Respondent shall place or post its New Contract forms on an Internet website or websites available to Michigan consumers. Such placement (posting) shall be in a clear and conspicuous format.

d. In all of Respondent's New Contracts, written or other mediums of advertisements, solicitations, or representations that sell or offer for sale any Contract that is a service contract, Respondent shall prominently display the following statement or

shall place the following statement, in 12-point bold type, at the first page of any such representation:

The contract we offer for sale is a service contract.

If you are not satisfied with all of the terms of the contract, you will have ten (10) days from the date you received it to write to: *(Respondent to insert here the name and address of the person and address for consumer to provide cancellation)* and cancel the contract. If you cancel, we will promptly refund any money you paid us.

VI. IMPLEMENTATION OF CONSUMER REDRESS

6.1 The redress provisions of this Section (Section 6) apply to:

a. Any consumer who filed a complaint with any Complaint Receiver before the Court Entry date and is identified pursuant to the provisions of Section 6.2; and

b. Any Consumer who purchased any S/W Contract, New Contract or other contract from Respondent on and after the date the NIA was Issued (i.e. January 28, 2002) who within 91 days after the Court Entry date, files a complaint with any Better Business Bureau or the Michigan Attorney General.

6.2 The Attorney General shall provide the Respondent, within 10 days of Court Entry, with copies of all relevant complaints on file. Additionally, within 10 days of Court Entry, Respondent shall contact all Better Business Bureaus requesting copies of consumers' complaints. Consumers shall additionally have the right to request that any Complaint Receiver forward a copy of the consumer's complaint to Respondent. If a Complaint Receiver fails to forward a consumer's eligible complaint, the consumer may provide directly to Respondent a copy of the original complaint, the name and address of the Complaint Receiver, and the date the original complaint was filed.

6.3 Within 15 days of the Court Entry, Respondent shall send by mail a "Notice" letter that is identical to the letter attached as Exhibit 1 to all Michigan consumers identified in Section 6.1, who had any written agreement with Respondent, whether it was an initial contract, a rider, an amendment or other agreement, at any time from January 1, 1995, to the present. The Notice letter allows complainants to choose between the following two remedies:

a. Reimbursement and payment of a refund of the price of the Contract (i.e. any written agreement) on a pro-rated basis, except those consumers entitled to receive a full refund under the terms of any written agreement shall receive the full refund. ; or

b. For all Covered Claims previously denied in whole or in part by any Exclusion, Respondent shall pay the complainant any money paid to any Technician or other business entity according to the following directions:

1. Respondent shall pay any Covered Claim according to the payment or reimbursement terms of the Auto S/W Contract, New Contract, or other written agreement, or

2. If the consumer presents at least two estimates or opinions by licensed mechanics or other evidence acceptable to the Redress Entity, that the consumer (or someone acting for the consumer) paid a higher amount for the replacement(s) and/or repair(s), the Redress Entity shall decide the amount Respondent shall pay the consumer for the Covered Claim, provided however, that the decision of the Redress Entity shall not be more than the amount the consumer (or someone acting for the consumer) paid for the replacement(s) and/or repairs. Further, the Redress Entity shall not be bound by any terms of the Auto S/W Contract, the

Contract, New Contract or other written agreement regarding replacement or repair cost determinations.

6.4 Respondent shall provide the Attorney General with a signed statement under oath and subject to the penalties of perjury indicating the date the Notice letters were postmarked and mailed. The statement shall include and incorporate an electronic list of the names and addresses of the persons to whom the Notice letter was sent. This electronic list shall be updated each time an additional Notice letter is sent.

6.5 A complainant shall have 45 days upon receipt of the letter to postmark and mail the Refund Claim Form to Respondent. Failure to timely respond waives the complainant's right to eligibility for refund under this Assurance.

6.6 If Respondent wants to dispute complainant's right to receive the payment as stated in Subsection 6.3 b, such dispute shall be processed in the following manner:

a. Within 15 days of receiving the consumer's response:

1. Respondent shall make all appropriate arrangements including but not limited to arrangements for payment of costs, fees and other expenses, with the Redress Entity located closest to the complainant's home address. The complainant and the Respondent may consent to use of another Redress Entity and to dispute resolution by telephonic/electronic conferencing.

2. Respondent shall mail to the Redress Entity a copy of the consumer's complaint, a copy of the consumer's Refund Claim Form, and all other attachments and documents with a cover letter referencing the complainant's name, address and the Department complaint number (if applicable) and listing by description the attachments and documents enclosed with the complaint

("Complaint Packet"). Respondent shall mail the Attorney General and the complainant a copy of the cover letter.

3. Respondent shall mail its letter of dispute detailing the reason(s) for the dispute ("Dispute Letter") and a copy of any contract(s) to the chosen Redress Entity. Respondent shall also mail a copy of the Dispute Letter to the consumer. Respondent's Dispute Letter shall provide appropriate information identifying the consumer, the chosen Redress Entity, and the addresses for receipt of Respondent's communications.

b. If the complainant wants to file a reply to Respondent's Dispute letter, the complainant shall have 45 days after receipt of a copy of the Dispute Letter to mail any written response ("Rebuttal Letter") to the Redress Entity. The complainant shall also mail a copy of the Rebuttal Letter to the Respondent.

c. Within 30 days of receipt of the Rebuttal Letter, or 45 days after a Rebuttal letter is reasonably due, whichever is later, the Redress Entity shall consider the dispute ("Dispute Consideration"). (The Redress Entity shall not consider any dispute arising from any complainant's claim of personal injury or wrongful death because the terms of this Assurance and the claims that may be determined under it relate only to consumer complaints.) The Redress Entity may require any party to provide other or further information. The Redress Entity shall determine the resolution for such dispute in a written determination ("Determination") that shall be mailed to the complainant, and to the Respondent. The Redress Entity shall mail its Determination within 60 days of the Dispute Consideration date, unless the Redress Entity obtains the Respondent's consent and the Consumer's consent to one or more extensions of time

for mailing the determination. The additional extensions of time shall not exceed 90 additional days.

d. The Redress Entity shall act as a neutral party, shall act in good faith and with fairness in making any Determination. The Redress Entity shall determine the dispute in accordance with the standards set forth in this Assurance, the MCPA, the Magnuson Moss Warranty Act, and any applicable Federal Trade Commission regulations, comments, rulings or cases. All legal authority shall be construed in a manner most favorable to the consumer. In addition, the Redress Entity may refer to the NIA and its attachments as a guide in making decisions and conclusions respecting whether a consumer's complaint is meritorious and/or whether any of Respondent's representations, advertisements, solicitations or any contract term, provision, clause or group of contract terms, provisions, or clauses, is misleading, confusing, false or otherwise deceptive.

6.7. Respondent shall be bound by the Determination. A complainant shall not be bound by the Determination. If the complainant declines to accept the results of the Determination, the Attorney General will close the complainant's complaint and code it as "conflict." A complainant's right to pursue any action or actions against Respondent in Michigan in any appropriate state or federal court(s) shall be preserved. The complainant is not bound by any Auto S/W Contract provision prohibiting filing of actions in Michigan as such provision is null and void. Further, the complainant is not bound to comply with any Auto S/W Contract provision requiring arbitration, such provision being null and void.

6.8 If the Redress Entity's Determination requires that the Respondent make payment to the complainant, Respondent shall postmark and mail such payment to the complainant within 10 days of the date the Redress Entity mailed the Determination to the Respondent.

6.9 As long as there are any complaints that remain unresolved by the provisions of this Assurance, Respondent shall not advertise to, solicit, contract, or otherwise communicate with any Michigan consumer who is a consumer affected by or who may be entitled to benefits under the redress provisions of this Assurance, except as provided in Paragraph 6.6 a 3, or the consumer consents, in writing, to such contact.

6.10 Except as previously specifically provided, Respondent shall make no other contact with any Michigan consumers unless it is first approved by the Michigan Attorney General or the redress and restitution required by this Assurance is complete. Further, Respondent shall not resume the marketing or selling of automobile service contracts and/or automobile warranty contracts unless the Michigan Attorney General provides written approval, such approval will not be unreasonably withheld.

6.11 If any delay caused by the Respondent disadvantages the consumer, the Department, upon written notice to the Respondent, may extend the period for the consumer's performance or other obligation under the Assurance. The extension period shall be equal to the number of days of Respondent's delay plus 14 days.

6.12 The parties, the complainant and the Redress Entities shall cooperate among themselves and if the Redress Entity requires reasonable modification(s) to the procedures outlined herein for implementation of redress for consumers, such modifications shall be made upon the written approval of the Department.

VII. REMEDIATION OF CREDIT RECORDS

7.1 For any consumer who had a disputed matter with Respondent that was resolved in a manner beneficial to the consumer, Respondent shall, within 45 days after Court Entry of this Assurance, notify in writing all credit reporting agencies of the need to remove all negative

or derogatory information Respondent caused, directly or indirectly, to be placed in the consumer's credit report or credit history. A copy of the written notice shall simultaneously be provided to the affected consumer.

**VIII. OTHER SETTLEMENTS OR LITIGATION WITH MORE
FAVORABLE TERMS/CONDITIONS**

8.1 This Assurance shall be amended to include any terms, provisions or other conditions more favorable to consumers that arise or arose from any agreement (or court order or decree) binding Respondent or any of its affiliated or related corporations as applicable to vehicle service contracts.

**IX. PAYMENT TO THE STATE AND REIMBURSEMENT
OF COSTS AND EXPENSES**

9.1 Respondents shall pay the sum of \$20,000.00 to the State of Michigan to reimburse the state for its legal, investigative and administrative expenses relating to historical compliance efforts directed at Respondents. The \$20,000.00 shall be paid by cashier's check made out to the "State of Michigan" and remitted to the Assistant-In-Charge, Stewart Freeman, Consumer Protection Division and delivered, with the Assurance signed by Respondent's authorized person, to the Office of the Attorney General, Consumer Protection Division, P.O. Box 30213, Lansing, MI 48909. The check shall reference Warranty Corporation, Assurance of Discontinuance No 200123446.

9.2 If the Department determines that Respondent has failed to comply with the terms of the Assurance and if in the Department's sole discretion the failure to comply does not threaten the health, safety, or welfare of the citizens of the State, the Department agrees to notify Respondent of such failure to comply and Respondent shall then have 10 days from the receipt of such notice to provide a good faith written response to the Department's determination.

9.3 If after the Attorney General has permitted Respondent to respond in accordance with Paragraph 9.2 of this Assurance, the Attorney General determines that Respondent failed to comply with the terms of this Assurance, upon demand by the Attorney General, but subject to the dispute resolution procedures of Section X, Respondent shall immediately pay the amount of \$100,000.00 to the Attorney General as a civil penalty. This civil penalty may be collected by execution, garnishment, or other legal process, together with interest (as interest on a judgment) from the date of Court Entry of the Assurance. Respondent shall additionally pay all attorney fees and costs, including, but not limited to, court costs, associated with any such collection efforts.

X. DISPUTE RESOLUTION

10.1 The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes between the parties arising under this Assurance and shall apply to all provisions of this Assurance. Any dispute that arises under this Assurance shall, in the first instance, be the subject of informal negotiations between the parties. The period of negotiations shall not exceed 10 days from the date of written notice by any party that a dispute has arisen, but it may be extended by agreement between the parties. The period for informal negotiations shall end when the Department provides a written statement setting forth its proposed resolution of the dispute to Respondent.

10.2 If the parties fail to resolve a dispute by informal negotiations, then the dispute shall be resolved in accordance with the resolution proposed by the Department unless, within 10 days after receipt of the Department's proposed resolution, Respondent files a petition for resolution with this Court setting forth the matters in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be

resolved to insure orderly implementation of this Assurance.

XI. NOTIFICATION AND EXECUTION OF DOCUMENTS

11.1 All notices, deliveries or other communications required or permitted between the Respondent and the Attorney General shall be in writing and shall be deemed given when confirmed by certified or registered mail addressed as follows:

a. If to the Attorney General:

Michigan Department of Attorney General
Consumer Protection Division
G Mennen Williams Building
525 W. Ottawa Street, Suite 690
Lansing, MI 48913

Facsimile: 517-335-1935

b. If to Respondent:

J. Claude Thompson
President and Chief Executive Officer
Warranty Corporation
4400 Government Boulevard
Mobile, AL 36693
Facsimile: 251-602-1459

The parties shall maintain their respective addresses until all terms of this Assurance have been satisfied, unless notice of the change is provided. Failure to provide a notice of change waives any objection of failure to timely notify.

11.2 If the Attorney General is unable to notify or serve Respondent at this address, the Attorney General may notify or serve Respondent's present attorneys/house counsel at any address the Attorney General obtains for such attorneys/house counsel.

11.3 This Assurance may be executed in counterparts.

XII. INDEMNIFICATION

12.1 The State of Michigan, the Attorney General, and the attorneys, agents, employees, or servants acting for the State and Department do not assume any liability by entering into this Assurance. This Assurance shall not be construed to be an indemnity by the State for the benefit of Respondent or any other person.

12.2 To the extent sovereign or governmental immunity does not apply, Respondent shall indemnify and hold harmless the State of Michigan, the Attorney General and all other State departments, agencies, officials, agents, employees, contractors and representatives for any claims or causes of action for damages or reimbursement from the State that arise from, or on, account of, any contract, agreement, or arrangement between Respondent and any person or entity for the performance of activities required of Respondent in this Assurance.

12.3 Respondent shall waive all claims or causes of action against the State of Michigan, the Attorney General, and any state department, agency, official, agent, employee, and attorney for damages, reimbursement, or set-off of any payment made or to be made to the State, that arises from, or is on account of, any contract, agreement or arrangement between Respondent and any other person or entity for the performance of activities required under this Assurance.

XIII. GENERAL PROVISIONS

13.1 Participation by Respondent in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose that would circumvent any part of this Assurance shall be deemed as non-compliance with the Assurance.

13.2 Under no circumstances shall this Assurance or the name of the State of

Michigan, the Office of the Attorney General, Consumer Protection Division, or any of their employees or representatives be used by Respondent, or its officers, agents, servants, employees, successors, assigns, attorneys or other persons or entities acting in concert or participation with Respondent in connection with any selling, advertising, or promotion of products or services, or as an actual or implied endorsement or approval of Respondent's acts, practices or methods of conducting business.

13.3 Neither the State, the Attorney General nor any other department, agency, official, agent, employee, or representative of the State or any of its subdivisions shall be held out as a party to any contract that is entered into by, or on behalf of, Respondent for the performance of activities required by this Assurance. Nor shall Respondent, or any person, agent, or entity acting for Respondent be considered an agent of the State or of the Attorney General or any other state department or agency.

13.5 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

13.6 If any clause, provision or section of this Assurance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance and this Assurance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

13.7 This Assurance does not extinguish, limit, or otherwise affect any private cause of action that any consumer may have against Respondent, whether arising under the MCPA or other law.

13.8 The Attorney General retains all rights under the MCPA and any other applicable

law, rule, or regulation to obtain information, to do inspection, and otherwise enforce all applicable laws, rules, and regulations. Respondent agrees that a violation by Respondent of any requirement of this Assurance shall constitute a violation of the Michigan Consumer Protection Act, MCL 445.901 et seq.

13.9 Failure of the Attorney General to timely enforce any term, condition, or requirement of this Assurance shall not provide, nor be construed to provide, Respondent a defense for noncompliance with any term of this Assurance or any other law, rule, or regulation; nor shall it stop or limit the Attorney General from later enforcing any term of this Assurance or seeking any other remedy available by law, rule, or regulation.

13.10 The Attorney General expressly reserves the right to take action against Respondent if at any time he discovers that any material information provided by Respondent prior to or after entry of this Assurance was false or misleading.

13.11 Nothing in this Assurance shall limit the power of the State, the Attorney General, or any other State department, agency, or official to direct or order all appropriate action to protect the public, health, safety, or welfare.

13.12 All Exhibits to this Assurance are a part of this Assurance. Further, any modification(s) to Exhibit 1 that may be required to expedite or clarify consumers' redress and agreed upon by the parties, shall be substituted as and become Exhibit 1.

13.13 The NIA that preceded this Assurance in addition to naming Warranty Corporation as a respondent, named as respondents the following other entities: The Warranty Group, Automotive Warranty Corporation of America, Warranty Acceptance Corporation, (hereafter the "Other Warranty Entities") and Heritage Warranty Mutual Insurance, Inc. As a part of this Assurance and to rescind the NIA as to the Other Warranty Entities and Heritage

Warranty Mutual Insurance, Inc. Respondent and the Other Warranty Entities must provide the Attorney General an affidavit satisfactory to the Attorney General, wherein the affiant for the Respondent and the Other Warranty Entities warrants the affiant is a person authorized by the Respondent and each of the Other Warranty Entities to make the affidavit and the declarations made in it, and to bind all and each of them as to the declarations made. Upon receipt of such satisfactory affidavit the parties agree that the NIA may be dismissed as to Heritage Mutual Warranty Insurance, Inc. and the Other Warranty Entities.

XIV. COVENANT NOT TO SUE BY PLAINTIFF AND RESERVATION OF RIGHTS

14.1 In consideration of the implementation of compliance measures, the reimbursement of the costs and expenses that will be made by Respondent under the terms of this Assurance, and except as specifically provided in this Section, the Department covenants not to sue or to take administrative action against Respondent for "Covered Matters."

14.2 "Covered Matters" shall include any liability to the State of Michigan for the following:

a. All claims for violations of the MCPA through the date of execution of the Assurance; and

b. Reimbursement of costs and expenses incurred by the State through the date of approval of the Assurance.


14.3 The covenant not to sue set forth in this Section does not pertain to any matters other than those expressly specified in "Covered Matters" in Paragraph 14.2. The Department reserves, and this Assurance is without prejudice to, all rights against Respondent with respect to all other matters including, but not limited to, the following:

- a. Liability arising from a violation by Respondent of a requirement of this Assurance.
- b. Liability for violations of the MCPA that occur after execution of this Assurance.
- c. Liability for criminal acts.

WARRANTY CORPORATION

Dated: Feb. 2, 2004

By:


J. Claude Thompson

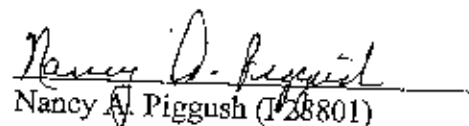
Its:

President and Chief Executive Officer

Michael A. Cox
Attorney General

Dated February 3, 2004

By:


Nancy A. Piggush (P28801)

Assistant Attorney General

Consumer Protection Division

P.O. Box 30213

Lansing, MI 48909

517-335-0855; Fax 517-335-1935

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NOTICE

POTENTIAL REFUND UNDER AGREEMENT BETWEEN THE MICHIGAN ATTORNEY GENERAL AND WARRANTY CORPORATION

Consumer Name
Address
Address

Dear Consumer:

Introduction

As the result of an agreement ("Assurance of Discontinuance") between the Michigan Attorney General and Warranty Corporation,¹ you may be entitled to a money refund. You may obtain a copy of the Assurance of Discontinuance and other related documents by visiting the Attorney General's website at: www.michigan.gov/ag, or calling the Attorney General toll-free at: 1-877-765-8388. The Assurance of Discontinuance affects only Michigan consumers.

Upon receipt of this letter, eligible consumers have only **45 days** to postmark and mail the Refund Claim Form response. Failure to timely respond will result in waiving any right to a refund under the Assurance of Discontinuance.

The Assurance of Discontinuance requires that Warranty Corporation offer refunds to consumers who had any written agreement with the Warranty Corporation (whether it was an initial contract, a rider, an amendment or other agreement) at any time from January 1, 1995, to the present ("Contract") and who have already filed a complaint with any one of several identified entities,² or who by [insert date that is 91 days after "Court Entry" date, see paragraph 1.7] files a written complaint with the Attorney General or any Better Business Bureau.

Section VI of the Assurance of Discontinuance explains the consumer refund process and is enclosed.

IMPORTANT: To be eligible for a refund, you must have timely submitted a complaint. A complaint is timely if you have already filed a complaint with the

¹ "Warranty Corporation" in this letter is used to refer to the same group of entities as the term "Respondent(s)" in the Assurance of Discontinuance.

² Under the Assurance of Discontinuance, a complaint filed before the Assurance was filed and entered with the court could have been filed with any "Complaint Receiver." A "Complaint Receiver" is defined as any federal or State Attorney General, any federal or State office that receives consumer complaints, any federal or State governmental unit which regulates insurers, any Better Business Bureau, any federal, State or local consumer affairs office or similar organization that has received or may receive any Michigan consumer's complaint made against any Respondent concerning Respondents' advertising, offering, selling, or compliance with, automobile service contracts and/or automobile warranty contracts. See paragraph 3.1 e.

Michigan Attorney General or any other "Complaint Receiver." A complaint is also timely if filed with the Attorney General or any Better Business Bureau by [Insert date that is 91 days after "Court Entry" date, see paragraph 1.7].

If you already filed a complaint with the Attorney General, please confirm the receipt of the complaint by calling the Attorney General toll-free at: 1-877-765-8388. If you complained to a different "Complaint Receiver," you may wish to confirm with that entity receipt of your complaint and that a copy was provided to Warranty Corporation.

Your Eligibility

Warranty Corporation records indicate that you may be an eligible consumer because you purchased one or more Contracts. The Contract(s) you purchased, the approximate date of purchase, and the price you paid for each contract is listed below:

| <u>Contract(s)</u> | <u>Date</u> | <u>Purchase Price</u> |
|--------------------|-------------|-----------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Two Types Of Money Refunds

Although there are two types of refunds, Type A Refund and Type B Refund, eligible consumers may only be considered for a single refund per Contract. The refund types are as follows:

Type A Refund (Contract Price Refund): Refund of the money the consumer paid for any Contract purchased from Warranty Corporation at any time between January 1, 1995, and the present time.

Type B Refund (Claim Refund): Refund of money representing the fair value of the costs expended by the consumer (or someone acting on behalf of the consumer) to provide services, maintenance, repairs, parts replacements, or other services or products, for the vehicle covered by Warranty Corporation's Contract if:

- 1) The consumer (or the service technician), acting in good faith, made a claim or attempted to make a claim to Warranty Corporation for reimbursement or payment for the expenses of the services, maintenance, repairs, parts replacements, or other benefits, and
- 2) Warranty Corporation, unfairly denied or ignored the claim in whole or in part.

Choosing The Refund To Which You May Be Entitled

A) A consumer is entitled to claim a Type A Refund if:

The consumer paid for a Contract with Warranty Corporation, at any time between January 1, 1995, and the present time, and all of the following conditions are met:

- (1) Has not received any payment or reimbursement from Warranty Corporation under such Contract.
- (2) Has timely filed a complaint.
- (3) Has completed and returned the Type A Refund Claim Form to Warranty Corporation.

B) A consumer is entitled to claim a Type B Refund if:

The consumer paid for a Contract with Warranty Corporation at any time between January 1, 1995, and the present time, and all of the following conditions are met:

- (1) Acting in good faith, made or attempted to make a claim for benefits with the Warranty Corporation.
- (2) Believes Warranty Corporation unfairly denied reimbursement or repayment in whole or in part.
- (3) Has timely filed a complaint.
- (4) Has completed and returned the Type B Refund Claim Form to Warranty Corporation.
- (5) Includes copies of at least two estimates or opinions by licensed mechanics or other evidence acceptable to the Better Business Bureau.

Warranty Corporation May Dispute Your Claim

If Warranty Corporation disputes the claim of any consumer seeking a Type A or a Type B Refund, the Better Business Bureau will make a determination, including what amount is owed to the consumer, and communicate the determination to both parties. Please review the attached provisions of Section 6 of the Assurance of Discontinuance for dispute process details.

REFUND CLAIM FORM

I. Type A Refund (Contract Price Refund)

Your full name: _____

Your complete address: _____

Telephone _____

The Contract or Contracts you purchased from Warranty Corporation. (List the name of each Contract, the approximate date of purchase of each, and the amount you paid for each):

Contract Name

Date of Purchase

\$ Amount

II. Type B Refund (Claim Refund)

Your full name: _____

Your complete address: _____

Telephone _____

For each Contract under which you (or your technician) made or attempted to make a claim with Warranty Corporation, provide the name of the Contract, the date of purchase, a statement of the amount of any reimbursement you received from Warranty Corporation, and a statement of the amount you seek as reimbursement or further reimbursement from Warranty Corporation.

| <u>Contract Name</u> | <u>Date of Purchase</u> | <u>Reimbursement Received</u> | <u>Reimbursement You Now Claim</u> |
|----------------------|-------------------------|-------------------------------|------------------------------------|
| | | | |
| | | | |

For all Type B Refund claims, you should include copies of at least two estimates or opinions by licensed mechanics or other evidence acceptable to the Better Business Bureau, that the consumer (or someone acting for the consumer) paid a higher amount for the replacement(s) and/or repair(s). See Assurance of Discontinuance, paragraph 6.3 b 2. The documentation should support the "Reimbursement You Now Claim" amount.

III. The information I have provided above is true and correct to the best of my knowledge.

Signature

Print your name here

Date

IV. Return this signed Refund Claim Form after you make a copy for your records to:

[Warranty Corporation provided address]

VI. IMPLEMENTATION OF CONSUMER REDRESS

6.1 The redress provisions of this Section (Section 6) apply to:

a. Any consumer who filed a complaint with any Complaint Receiver before the Court Entry date and is identified pursuant to the provisions of Section 6.2; and

b. Any Consumer who purchased any S/W Contract, New Contract or other contract from Respondent on and after the date the NIA was issued (i.e. January 28, 2002) who within 91 days after the Court Entry date, files a complaint with any Better Business Bureau or the Michigan Attorney General.

6.2 The Attorney General shall provide the Respondent, within 10 days of Court Entry, with copies of all relevant complaints on file. Additionally, within 10 days of Court Entry, Respondent shall contact all Better Business Bureaus requesting copies of consumers' complaints. Consumers shall additionally have the right to request that any Complaint Receiver forward a copy of the consumer's complaint to Respondent. If a Complaint Receiver fails to forward a consumer's eligible complaint, the consumer may provide directly to Respondent a copy of the original complaint, the name and address of the Complaint Receiver, and the date the original complaint was filed.

6.3 Within 15 days of the Court Entry, Respondent shall send by mail a "Notice" letter that is identical to the letter attached as Exhibit I to all Michigan consumers identified in Section 6.1, who had any written agreement with Respondent, whether it was an initial contract, a rider, an amendment or other agreement, at any time from January 1, 1995, to the present. The Notice letter allows complainants to choose between the following two remedies:

a. Reimbursement and payment of a refund of the price of the Contract (i.e. any written agreement) on a pro-rated basis, except those consumers entitled to receive a full refund under the terms of any written agreement shall receive the full refund ; or

b. For all Covered Claims previously denied in whole or in part by any Exclusion, Respondent shall pay the complainant any money paid to any Technician or other business entity according to the following directions:

1. Respondent shall pay any Covered Claim according to the payment or reimbursement terms of the Auto S/W Contract, New Contract, or other written agreement, or

2. If the consumer presents at least two estimates or opinions by licensed mechanics or other evidence acceptable to the Redress Entity, that the consumer (or someone acting for the consumer) paid a higher amount for the replacement(s) and/or repair(s), the Redress Entity shall decide the amount Respondent shall pay the consumer for the Covered Claim, provided however, that the decision of the Redress Entity shall not be more than the amount the consumer (or someone acting for the consumer) paid for the replacement(s) and/or repairs. Further, the Redress Entity shall not be bound by any terms of the Auto S/W Contract, the Contract, New Contract or other written agreement regarding replacement or repair cost determinations.

6.4 Respondent shall provide the Attorney General with a signed statement under oath and subject to the penalties of perjury indicating the date the Notice letters were postmarked and mailed. The statement shall include and incorporate an electronic list of the names and

addresses of the persons to whom the Notice letter was sent. This electronic list shall be updated each time an additional Notice letter is sent.

6.5 A complainant shall have 45 days upon receipt of the letter to postmark and mail the Refund Claim Form to Respondent. Failure to timely respond waives the complainant's right to eligibility for refund under this Assurance.

6.6 If Respondent wants to dispute complainant's right to receive the payment as stated in Subsection 6.3 b, such dispute shall be processed in the following manner:

a. Within 15 days of receiving the consumer's response:

1. Respondent shall make all appropriate arrangements including but not limited to arrangements for payment of costs, fees and other expenses, with the Redress Entity located closest to the complainant's home address. The complainant and the Respondent may consent to use of another Redress Entity and to dispute resolution by telephonic/electronic conferencing.

2. Respondent shall mail to the Redress Entity a copy of the consumer's complaint, a copy of the consumer's Refund Claim Form, and all other attachments and documents with a cover letter referencing the complainant's name, address and the Department complaint number (if applicable) and listing by description the attachments and documents enclosed with the complaint ("Complaint Packet"). Respondent shall mail the Attorney General and the complainant a copy of the cover letter.

3. Respondent shall mail its letter of dispute detailing the reason(s) for the dispute ("Dispute Letter") and a copy of any contract(s) to the chosen Redress Entity. Respondent shall also mail a copy of the Dispute Letter to the

consumer. Respondent's Dispute Letter shall provide appropriate information identifying the consumer, the chosen Redress Entity, and the addresses for receipt of Respondent's communications.

b. If the complainant wants to file a reply to Respondent's Dispute letter, the complainant shall have 45 days after receipt of a copy of the Dispute Letter to mail any written response ("Rebuttal Letter") to the Redress Entity. The complainant shall also mail a copy of the Rebuttal Letter to the Respondent.

c. Within 30 days of receipt of the Rebuttal Letter, or 45 days after a Rebuttal letter is reasonably due, whichever is later, the Redress Entity shall consider the dispute ("Dispute Consideration"). (The Redress Entity shall not consider any dispute arising from any complainant's claim of personal injury or wrongful death because the terms of this Assurance and the claims that may be determined under it relate only to consumer complaints.) The Redress Entity may require any party to provide other or further information. The Redress Entity shall determine the resolution for such dispute in a written determination ("Determination") that shall be mailed to the complainant, and to the Respondent. The Redress Entity shall mail its Determination within 60 days of the Dispute Consideration date, unless the Redress Entity obtains the Respondent's consent and the Consumer's consent to one or more extensions of time for mailing the determination. The additional extensions of time shall not exceed 90 additional days.

d. The Redress Entity shall act as a neutral party, shall act in good faith and with fairness in making any Determination. The Redress Entity shall determine the dispute in accordance with the standards set forth in this Assurance, the MCPA, the Magnuson Moss Warranty Act, and any applicable Federal Trade Commission regulations, comments, rulings or

cases. All legal authority shall be construed in a manner most favorable to the consumer. In addition, the Redress Entity may refer to the NIA and its attachments as a guide in making decisions and conclusions respecting whether a consumer's complaint is meritorious and/or whether any of Respondent's representations, advertisements, solicitations or any contract term, provision, clause or group of contract terms, provisions, or clauses, is misleading, confusing, false or otherwise deceptive.

6.7. Respondent shall be bound by the Determination. A complainant shall not be bound by the Determination. If the complainant declines to accept the results of the Determination, the Attorney General will close the complainant's complaint and code it as "conflict." A complainant's right to pursue any action or actions against Respondent in Michigan in any appropriate state or federal court(s) shall be preserved. The complainant is not bound by any Auto S/W Contract provision prohibiting filing of actions in Michigan as such provision is null and void. Further, the complainant is not bound to comply with any Auto S/W Contract provision requiring arbitration, such provision being null and void.

6.8. If the Redress Entity's Determination requires that the Respondent make payment to the complainant, Respondent shall postmark and mail such payment to the complainant within 10 days of the date the Redress Entity mailed the Determination to the Respondent.

6.9. As long as there are any complaints that remain unresolved by the provisions of this Assurance, Respondent shall not advertise to, solicit, contract, or otherwise communicate with any Michigan consumer who is a consumer affected by or who may be entitled to benefits under the redress provisions of this Assurance, except as provided in Paragraph 6.6 a 3, or the consumer consents, in writing, to such contact.

6.10 Except as previously specifically provided, Respondent shall make no other contact with any Michigan consumers unless it is first approved by the Michigan Attorney General or the redress and restitution required by this Assurance is complete. Further, Respondent shall not resume the marketing or selling of automobile service contracts and/or automobile warranty contracts unless the Michigan Attorney General provides written approval, such approval will not be unreasonably withheld.

6.11 If any delay caused by the Respondent disadvantages the consumer, the Department, upon written notice to the Respondent, may extend the period for the consumer's performance or other obligation under the Assurance. The extension period shall be equal to the number of days of Respondent's delay plus 14 days.

6.12 The parties, the complainant and the Redress Entities shall cooperate among themselves and if the Redress Entity requires reasonable modification(s) to the procedures outlined herein for implementation of redress for consumers, such modifications shall be made upon the written approval of the Department.